



The Attorney General of Texas

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December 30, 1983

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Mr. Tom Bond
Commissioner
State Board of Insurance
1110 San Jacinto Boulevard
Austin, Texas 78786

Open Records Decision No. 404

Re: Whether documents relating to inspection reports regarding amusement rides at the State Fair of Texas are subject to disclosure under the Open Records Act

Dear Mr. Bond:

You have requested a decision under the Open Records Act, article 6252-17a, V.T.C.S. The relevant facts as set forth in your request letter are as follows:

Senate Bill No. 446 amended the Texas Insurance Code by adding article 21.53 - Amusement Ride Safety Inspection and Insurance Act. Sections 4 and 5 of article 21.53 of the Texas Insurance Code require certain documents to be filed with the State Board of Insurance before July 1 of each year. Specifically, the act requires an amusement ride operator to file:

(1) a written certificate that the amusement ride has been inspected for safety and that the amusement ride meets the standards for coverage and is covered by required insurance; and

(2) an insurance policy in an amount of not less than \$1 million per occurrence insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride.

Because the bill did not take effect until after July 1, 1983, the interpretation of the State Board of Insurance is that the first filing is required sometime before July 1, 1984.

Subsequent to the passage of the act, an amusement ride operator, Continental Park

Attractions, filed an inspection report, and a certificate of insurance showing coverage on its rides. The certificate of insurance, a one page document, shows \$1 million liability coverage and excess liability coverage above the \$1 million. In addition, the fair operator where the amusement rides were to be run, State Fair of Texas, filed inspection reports and policies or certificates of insurance on the various amusement rides, both its own and those operating under contract. The policies filed by State Fair of Texas on its own behalf indicate that a city is a named insured under the policy. Further, most of the certificates of insurance filed by the State Fair of Texas on behalf of various amusement ride operators also name the city as a named insured and/or certificate holder. Further, it is the understanding and belief of the State Board of Insurance that the State Fair of Texas has a legal relationship with the city. On Monday, October 16, 1983, an amusement ride operated by Continental Park Attractions at the State Fair of Texas was involved in an accident, causing a fatality and several injuries.

A request has been made for any files 'relating to inspection reports and certificates of insurance for the State Fair of Texas and Continental Park Attractions, specifically amusement rides at the Fair, and any documents or correspondence related to the inspections and certificates.'

Therefore, my questions to you are as follows:

(1) Are these documents filed by the State Fair of Texas excepted from disclosure under section 3(a)(3) in that they are information relating to litigation of a criminal or civil nature to which the state or a political subdivision, i.e., the city, is, or may be, a party?

(2) If the filings by the State Fair of Texas are not excepted from disclosure, is the amount of insurance coverage in excess of \$1 million excepted from disclosure because it is not required to be filed by article 21.53?

(3) Are the portions of the documents filed by Continental Park Attractions, to the extent

they reveal insurance coverage in excess of the \$1 million required by article 21.53 of the Insurance Code excepted from disclosure because they are not required to be filed by article 21.53?

Section 3(a)(3) of the Open Records Act excepts the following from required disclosure:

[I]nformation relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection;

In this instance, the State Board of Insurance seeks to invoke section 3(a)(3). The foregoing facts, however, do not indicate any way in which the board is or may become a party to litigation arising out of the accident in question; at most, these facts indicate only that a city may become a party to such litigation. No city, however, has as yet attempted to invoke this section. Given these facts, we cannot conclude that section 3(a)(3) is applicable.

In answer to your second and third questions, we note that section 3(a) of the Open Records Act specifically provides that

[a]ll information . . . maintained by governmental bodies pursuant to law . . . is public information and available to the public . . . with the following exceptions only: (Emphasis added).

To the extent that the amount of insurance coverage in excess of \$1 million is reflected on forms filed with the board by either the State Fair of Texas or Continental Park Attractions, that amount certainly constitutes "information . . . maintained by" the board. Accordingly, the board may withhold information as to said amount only if some exception in the act authorizes it to do so. You have not, however, directed our attention to any applicable exception. You claim that information revealing this amount may be withheld under section 9 of article 6252-19, V.T.C.S., the Texas Tort Claims Act, which provides in part that

[n]either the existence or amount of insurance shall ever be admissible in evidence in the trial of any case hereunder, nor shall the same be subject to discovery.

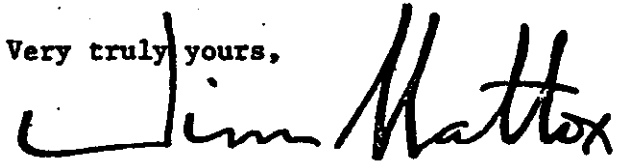
The first part of section 9, however, provides that

all units of government are hereby expressly
authorized to purchase policies of insurance
providing protection for such units of
government . . . against [various claims].
(Emphasis added).

It is clear, therefore, that the language you cite applies only to insurance purchased by units of government. Continental Park Attractions, which purchased the insurance at issue here, is clearly not a "unit of government," and section 9, therefore, has no bearing on this question.

This office may invoke section 3(a)(1) of the act when it concludes that requested information is confidential; in this instance, however, we are aware of no statute, constitutional provision, or judicial decision that makes this information confidential. We therefore conclude that this information is not protected from required disclosure.

Very truly yours,



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